

Burlington Development Review Board

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Brad Rabinowitz
Jonathan Stevens
Alexandra Zipparo
Israel Smith
AJ LaRosa
Geoff Hand
Wayne Senville, (Alternate)
Jim Drummond, (Alternate)



BURLINGTON DEVELOPMENT REVIEW BOARD

Tuesday January 19, 2016, 5:00 PM

Contois Auditorium, City Hall, 149 Church Street, Burlington, VT
Minutes

Board Members Present: Austin Hart, Brad Rabinowitz, Israel Smith, Ali Zipparo,
Geoff Hand, A.J.LaRosa

Board Members Absent: Wayne Senville, Jim Drummond, Jonathan Stevens

Staff Members Present: Scott Gustin, Mary O'Neil, Anita Wade

I. Agenda

II. Communications

III. Minutes

IV. Public Hearing

1. 16-0517CA; 122 Summit Street (RL, Ward 6S) Robert E. Linder

Appeal to replace one window on third floor. (Project Manager, Mary O'Neil)

A.Hart – The City will begin with an explanation of their actions.

The applicant and interested parties are sworn in.

M.ONeil - property owner and architectural firm applied for a COA for a large renovation. The DAB approved the project renovations, except for the replacement of a third floor window. The permit was approved administratively minus the third floor window. The applicant specifically made a permit for the 3rd floor replacement window, which was denied administratively and then sent to the DRB.

R.Ward and P.King architects for the applicant proceeded to present their intentions before the Board. Applicant and architect believe there is a combination of many styles, mostly Tudor revival and Colonial revival. The third floor is more of a Colonial revival though not a pure style. DAB did allow for the removal of a loop-hole window to be replaced with a three mulled window. Applicants had taken upon themselves to obtain signatures of neighbors who approve the window project. Architect presented drawings to the Board during the meeting, mentioning the three pieces; existing drawings, approved DAB drawings, and the proposed renderings by the architect. In addition, the Board accepted the architects' notes and signatures list, which was given to M.ONeil with the neighbor signature list.

A.Hart – asks for an explanation as to why this design was consistent with architect's rendering.

R.Ward – responded that it mimics details from the original building on the 2nd floor for which the bay window was never built.

A.Hart – are the original drawings available?

M.ONeil – I cannot find a copy of the original drawings.

R.Ward - we do not have the original drawing blueprint.

B.Rabinowitz – with the building in-tact, is the issue is more about how the house was built originally?

M.ONeil – the original application had a number of alterations that the DAB resolved. The DAB specifically address the change in plane pertaining to the 3rd floor window and how it can be extended. The clarity of design makes it eligible for historic.

A.J.LaRosa – the top element on the window, what was the material?

R.Ward – copper.

A.Hart – the public hearing is closed at 5:17pm.

2. 16-0151DT; 2-8 Hickok Place (RM, Ward 2C) Diemer Apartments LLC

Appeal of an adverse determination relative to five and six bedroom usage grandfathered within four living units. *Continued review.* (Project Manager, Scott Gustin)

A.Hart - swears in property owner and interested parties. Board has materials that were submitted months before about what the standard was. This project is not so much about the facts and the evidence, but about the initial issue on what is the appropriate standard to apply and what is the burden of proof for the use.

D.ORourke – you received the memo we prepared. The City's memo sets it out best on the first page the question is whether this is a pre-existing or non-conforming status for five or six unrelated individuals as opposed to the limit of four unrelated individuals according to the CDO. In 2000 residential standards were set and established in the ordinance for 4 unrelated persons. The Mentos case pertained to single family detached home, which is the Court even mentioned a different analysis than a boarding house. The Diemers' went back to the 1986 interpretation on the use of property. At that point City was issuing permits for this use. The property has been used consistently as that use. In another memo they said to go back to 1946. We feel we have demonstrated that we should be looking at the 2000 standard for unrelated persons when City adopted the ordinance and worst case 1986. In no terms is it 1946. When Diemers' purchased property in 2003 went through all necessary steps.

A.Hart – asks if applicant wishes to provide supplemental information.

D.ORourke – the only supplementation was the code enforcement letter in 2003, when the applicants bought the property.

J.Diemers – I wanted make sure one of the code inspectors inspected the property prior to purchase. Jeanne said they were not physically in the property, but Mr. Robar from code enforcement was at the property several times.

A.Hart – asked to hear from City staff.

K.Sturtevant – my memo of legal analysis speaks to the trigger date for grandfathering for this use was the 1970 date.

A.Hart – why are we looking at 1970 and not 1986?

K.Sturtevant – I think 1986 is being focused on due to permits. Some of these permits are building permits and not occupancy permits so they do not control under the zoning ordinance. Building is looking at different standards than zoning standards. Because of the Mentos case the analysis and the language takes us back to 1970, when the specific language shows up with the definition of family being one or more persons occupying a dwelling unit and living in a single not for profit housekeeping unit that does not include group quarters, sororities, fraternities, convents, and communes.

A.Hart – which was added in 1970?

K.Sturtevant – yes and interpreted by the Mentos decision.

A.J.LaRosa – this is not just establishing it was legal but also about the quantity and amount of units?

K.Sturtevant – yes, and continuation of use throughout changes in ordinance. I believe we have a supplemental on the factual issue which are excerpts from directories in Burlington on units and occupants in the City of Burlington for 1970, 1971, and 1972, the present list shows unit and name of occupant. Resources are from the special collections at the UVM library.

A.Hart – please make sure the applicant receives them too.

K.Sturtevant – I did already give one to the applicant.

M.ONeil - from last hearing, staff was trying to determine what resources were available on what number of units and occupancy levels. We discussed the directories available on the number of units and occupancy from Burlington directory resources at the UVM public library. Only looked back to as far as 1970. The directory is a combination of phone book, business, commercial, and yellow pages directory. Defines how information is collected.

Pages were copied pertinent according to Hickok Place from 1970 and then in 1992 it changed to a phone book.

A.Hart - in your opinion what does this tell us that is relevant to the appeal?

M.ONeil - it is not my opinion, this is factual showing fewer units and fewer occupants until occupancy swells in 1980.

B.Rabinowitz - these are apartment numbers that are hard to tell if they are occupied or vacant. What if it was vacant at some point in time, what would this show if it is still the same number of units?

M.ONeil - we are trying to determine two things; how many units there are and how many occupants per unit.

A.Zipparo - questions how on the lists and how to do a determination of the occupancy and units.

K.Sturtevant - this is an application for grandfathering and applicant needs to go back to 1970 to determine if it meets the definition at that time it was legal.

M.ONeil - the character of occupancy changed in the 1980's.

Board members had questions specific to the directories in regard to Hickok Place.

K.Sturtevant - Bill wanted to clarify his testimony.

B.Ward - the way the ordinance was written, code enforcement office was required in 2001 to start collecting information from landlords. Prior owners to the Diemers', reported occupants 6,5,5,5. When the Deimers' purchased the property, record showed they reported the same number of occupants as previous years. Looking at records from 2001 to 2015 data, the records were consistent with what the Deimers' reported. We would not have had data from 1986 to 2000, since data was not collected in the same way prior to 2000.

A.Hart - to clarify, prior to 2001, your records would not show the number of occupants in each unit?

B.Ward - that is correct.

G.Hand - question for Kim: if this unit has been vacant for a year or more would this be considered a discontinuance?

K.Sturtevant - yes. I believe there may be a provision in the ordinance for someone who is actively seeking to rent or sell. Not aware of this situation with the applicant. Generally, yes, if discontinued for a year or more would have to go back to legal occupancy according to the standard. When Ms. Demier requested a physical inspection, this would have been a minimal inspection done by Mr. Robar, as the minimal housing inspector, who inspects for health and safety. Jeanne Francis is the zoning inspector for code compliance.

B.Ward - confirmed this information, saying that Don Robar is a housing inspector and Jeanne Francis is zoning specialist.

D.ORourke - mentioned the 1970 directory and that maybe pertaining to people's phone bill and maybe subscription only had to pay to be in it. Please give this appropriate weight and determination. The question was about an affidavit of the prior owner. My recollection was that he didn't have reason to believe his testimony was not accurate. Not trying to imply he said going back to 1986. We went back to 1970 to count people. Keep in mind the memo said to go back to 1946. At some point we need to exercise common sense. Previously, staff applied permits to the existence of bedrooms and not to the occupancy, but let's use our common sense. Do people get permits for bedrooms to leave them open and unrented? It is probably unlikely. You have the affidavit of the prior owner in your packet and the Board has all the information needed to make a determination. As of 2000, this was grandfathered. In 1986, this was grandfathered. Ask that you make the appropriate determination.

J.Deimer - my recollection about what Mr. Ward had said was that the Board asked Mr. Ward if he would be comfortable saying we were satisfied back to 1986 in providing the information. Last thing I want to add is that I do appreciate the Board's time. This is very important to my husband and myself. We purchased the building with intent to use it as it was used in the past in 1986. We purchased for certain amount of money based on number of units and feel we should be grandfathered to do this. We would be selling based on that use, otherwise we will be at a loss with the purchase and the sale. We are trying to figure out what we need to do. We feel the logical decision is to grandfather this property.

I.Smith - question about the permits issued in 1986.

S.Gustin - it was in the original permit.

D. ORourke - often Boards are concerned about setting precedents, I don't think that is the concern in this situation where it will distinguish itself from anything else.

A.Hart - closed public hearing at 5:49pm.

V. Certificate of Appropriateness

1. 16-0622CA; 351 North Ave (RM-W, Ward 4N) Burlington College

Request change of materials for existing slate roof to standing seam copper on the Orphanage building. (Project Manager, Mary O'Neil)

A.Hart - swears in applicant and interested parties.

E.Farrell - I'm here to ask the Board permission to replace existing slate roof with copper seamed roof. Originally, the intention was to replace the slate roof and salvage slates but since then determined the roof cannot be repaired. Couple of slating company reports said the roof cannot be repaired and that there are a small number of slates salvageable. Section of ordinance speaks to Department of Interior standards applied reasonable and economic feasibility. Mentioned costs to restore the Orphanage building costs. Every effort is being made to restore to the original. It's a challenge with existing brick buildings and historic restorations. Also want to make building energy efficient. It evolves into choices whether to spend the money. With new slate roof expensive to maintain slate, especially since this is high off the ground and pretty risky. We opted for copper because it is recognized as historically appropriate and original by the Department of Interior. Think copper is more attractive. Slide presentation shows examples of other standing seamed copper roofs, Edmunds School, H.O. Wheeler School, corner of College and Hungerford brick building my brother got an award in 1999. We would like to preserve the opportunity for solar panels on the west side and cannot do this with a slate roof. The costs of copper vs slate roof is about half and copper will be just as impressive feature of building. Mentioned roofing costs of copper and slate.

A.Hart - looking at east elevation, the concern was with the skylights, though with new information about the slate understand. Though with the view from North Ave, it is so high that the skylights would not be seen as much.

E.Farrell - no other aspect has changed. Will do copper flashing around the skylights windows.

A.Hart - you gave us costs of new copper versus a slate roof, can you speak to the life of each.

E.Farrell - with slate have annual maintenance and copper is no annual cost. The maintenance was not the driver, it's the initial costs. The DAB recommended it 4 to 1 with one condition, asking we place snow guards on copper roof. There is several decades of use for both materials.

B.Rabinowitz - I basically agree with what Eric is saying, but would it be consistent with the ordinance if someone in the old North end residence put on copper instead of slate?

M.ONeil - practice since 1995 was submission of a slater's report about the quantitative and qualitative features of the roof, the degree of failure and if the roof has reached the end of its serviceable life. The replacement maybe considered and may be the choice of the property owner who may apply for a standing seam or asphalt shingle if demonstrated at the end of its life. No requirement to do this material, but may be based on the reports.

B.Rabinowitz - the same standard?

M.ONeil - the application is for this particular development does not suggest the roof is at the end of its serviceable life. It's for the purposes of this particular development. Testimony at last hearing that there would be a replacement roof.

B.Duncan - at our original application, I was of the impression we said this roof has failed and that it is at the end of its useful life due to long term lack of maintenance after an examination of the 145 year old roof. Not patched or maintained properly. It is clear it has exceeded its useful life. Our intention all along to replace this roof with a copper seamed roof. We had submitted letters pertaining to this.

G.Hand - is this supported by letters?

B.Duncan - cannot find a square footage in the attic that hasn't had water problems.

E.Farrell - we did say that the roof has failed.

A.Zipparo – can you speak to the reflectivity of its useful life? Does it reflect sunlight and color changes?

B.Duncan - it will look like the historic schools with copper seamed roofs. It is a short lived phenomena. Reflectivity shouldn't be an issue. It will look like new penny for a short period of time and will become dark green in 75 years. It takes a long time.

A.Hart - closes public hearing at 6:06pm

VI. Sketch Plan

1. **16-0587SP; 194 and 202 South Champlain Street (RH, Ward 5S) Erik J. Hoekstra**
Demolish addition and garage at 194 So Champlain Street, replace with new duplex and garage structure. In association, demolish single family home at 202 So Champlain Street, replace with new single family home. (Project Manager, Mary O'Neil)

Board Members Recused: AJ.LaRosa, G.Hand

A.Hart – mentions a preliminary matter and disclaimer that he is a partner in a partnership as that owns a parking lot at South Champlain St and Maple St in vicinity of proposal. If anyone feels this is inappropriate, please let him know.

E.Hoekstra – not representing Redstone properties; described properties; 202 South Champlain St, a historic, nonconforming lot, shallow parcel has almost no backyard. 194 deep parcel at So Champlain St was once school house number 8 built for City of Burlington in 1850, which had been converted into residential in 1874.

There is a back wood connected structure was constructed in late 1800's and then a garage structure in the rear yard. This block not seen a lot of investment over the years. It is not pragmatic to invest in the 202 house and proposing demolition since there is nothing historically significant. The house is in tough shape with significant cracks in the foundation and a 3" thick concrete buttress which is failing. There are significant code issues. The maximum ceiling height is 6'6", which slopes to 4'3". It is difficult to move around on the 2nd floor due to the low ceilings.

Head height on the stairs is 5'. In addition, the roof is falling apart. I want to replace this house with a new modern single family home adding to the area's historic character.

194 So Champlain is completely rebuilt and historically correct. We mothballed the rear wood structure and the garage, which was a former location of feral cats. The garage is a nonconforming structure and is almost on the rear property line.

194 So Champlain would have a new rear 3 story structure with a connector and side entry porch and a three car garage and above level apartments.

202 So Champlain would become a new single family with a smaller footprint. Requesting a 3 story and setback off street consistent with other buildings on the street. Lot coverage will go from 67% to 62%. May have to do a boundary line adjustment due to the encroachment of 202 on 194 or else change location of the new structure at 202.

The DAB feedback was supportive of 194 and not entirely supportive at 202. The DAB would like a stronger case for demolishing 202. The ceiling heights did not present as much of a problem for them.

A.Hart - open to this zoning ordinance for demolish historic home unless it serves the public good and public need to lose a historic building. This could be a potential issue.

When you come back to the Board, provide us with additional evidence and options for preserving the garage and same for the single family home. The new home seems modern in form. Indicate how it pays homage to historic district. Staff comments question how it will be treated as a PUD. We will look at this carefully.

B.Rabinowitz – this is a reasonable direction with the addition, but how does it relate to the existing house and where one enters the apartments. The main stairway is across the parking lot and seems unfortunate and you need to walk into parking lot to get the apartment. Suggested applicant address this in going forward.

M.ONeil – factually, 189 and 191 was ordered demolished by the building inspector. The owner had a plan for redevelopment but then withdrew. 194 does not have an approved site plan. With no previous site plan, it is not certain how long the coverage became this way.

This area of RH density is a remnant of urban renewal, which has had some criminal activity and not a lot of investment or redevelopment.

A.Hart – what is the parking per unit?

M.O'Neil - confirms 2 per unit.

B.Rabinowitz - how many units will there be, 4 on 194 and 1 at 202?

E.Hoekstra – wanted to make sure we are going down right road and no major concerns before investment.

T.Liamos - owned his property behind this project site for 20 years with an 8 unit apt house. Feels he will be impacted the most, since the 194 So Champlain garage backs up onto his building and parking lot.

A.Zipparo - do you live there?

T.Liamos - lived there 10 years, but not now. Would like the reason for tearing down garage, which will have an impact on his property. He encourages Eric to rethink tearing down the garage and provide shelter parking and retain brick wall.

A.Hart – is this mostly about aesthetics?

T.Liamos - partly aesthetics. Every year my fence is taken out with Champlain Housing's plow. Mentioned those residences who have lived there some over 40yrs. It is not a rough neighborhood and people do invest. Likes what Eric did to brick building. Would like to work with Eric and keep the wall between the properties.

M.O'Neil - didn't want to imply that there was no investment on street.

A.Hart - sorry only 4 board members present to hear the sketch plan.

Closed public hearing at 6:41pm.

2. 16-0612SP; 453 and 501 Pine Street (ELM, Ward 5S) Derrick D. Davis

Sketch plan of proposed 4-5 story, 100,000 sf commercial building and associated site improvements. (Project Manager, Scott Gustin)

Board Members Recused: AJ.LaRosa, G.Hand, I.Smith

E.Hoekstra and J.Dextradeau spoke on the technical aspects of the two separate parcels with a slide show.

E.Hoekstra - Spoke of the Pine St Superfund Site and EPA designation. 453 Pine St is considered a Brownfield, but deemed not as significantly contaminated as former coal gasification plant at 503 Pine St which held coal tar during its long commercial history. Showed an 1887 depiction of location with stacks of lumber and where barge canal was used for transport of materials.

This property is part of State of Vermont BERA, the Brownfield Economic Revitalization Alliance Project TEAM. Described as the enterprising zone where State, City and property owner are working on a revitalization plan for this property. Property is intended for high density development. The City encouraged property owner and design team to come up with project moving building closer to street scape with building oriented toward Howard St. and Pine St intersection. Parking will be mostly in the rear of property. Ancillary parking will be screened. Contamination of Brownfield may mean more parking at 501 and patio on south side of 453 to provide plenty of parking as requested by residents in the area. Parking will be more plaza atmosphere possibly available for Art hop and other events. Preliminary conceptual drawings shows a building within a building. Th resembles four story mill brick architecture and a five story element that is more modern with a roof deck and siding. having higher threshold issues with height. With a smaller footprint, asking for higher height at 65 feet. Have threshold issues regarding building height and seeking guidance from the DRB.

B.Rabinowitz – asked if this was a Maltex comparison.

E.Hoekstra - Maltex is maybe shorter. We may need to build on more solid ground.

A.Hart – it would be useful to have comparable drawings and include the Maltex building.

E.Hoekstra – the density of building comparisons does not show the same floor ratio. This would be is lower than buildings nearby. There are limitations with the boundaries, pockets of coal tar on the east, but nothing done west of line. This is in a 100 year flood zone and has a wetland buffer of 50' for state standards, and 100' by city standards. This has been discussed with multiple departments feeling that a slight encroachment is allowable.

A.Hart - some encroachment is okay.

S.Gustin - yes.

A.Hart - the DRB Board encourages going before the Conservation Board.

E.Hoekstra - we are looking at a lot of different commercial uses. The minimum parking is 2 per 1000 and maximum is 250. We will have 83 spaces beyond the maximum to be supportive and beyond the maximum.

B.Rabinowitz - is all the parking for this project?

E.Hoekstra - mostly for this project, but we won't know what real parking requirement is at this point.

S.Gustin - parking is based on conditional use due to the size of project.

E.Hoekstra - there are different permits for each parcel. 501 Pine St is just for parking presented to Board and NPA. The NPA concerns are about Brownfields and whether or not it adversely impacts the Superfund Site. The EPA and multiple state boards and Conservation Board are concerned about traffic. We will do traffic and parking analysis. There is more than enough parking reducing the impact. Looking conservation and stormwater solutions by using pervious pavers or asphalt and level spreaders flowing toward barge canal and evenly spreading out water.

A.Zipparo - can we have someone come from ANAR next time?

E.Hoekstra - yes, I intend to ask Trish to come. The DAB recognizes the existing shortage and little parking and transportation.

A.Zipparo - why not a parking garage?

E.Hoekstra - this is not financially feasible, especially with Brownfield issues.

J.Dextradeau - the staff says the overlay district restricts this. There are specific procedures about any impact and the littoral lakeshore conservation zone follows open waters of the barge canal. The offsite of area and the Pine St barge canal wetland natural area does overlap 501 and 453. This creates separate presentations and with the FEMA flood hazard zone.

E.Hoekstra - there needs to be on going monitoring by former owners needing access points to access superfund; city has a vision to address the Superfund Site and more natural area in future.

A.Hart - it seems an appropriate site for redevelopment but it has tons of challenges. Thrilled that someone has come up with a project that may work here.

Open to additional height, due to site detriments. Additional parking is right up against the street and know parking is not highest and best use, which the Board will take into account.

The traffic and lefts on Pine St will be studies the Board is interested in looking at. The height looks like building to the rear is a solid block looming over nice Mill building.

B.Rabinowitz - the offset between the two buildings is small. Pine St is developing innovative projects, though it looks a little suburban with massing.

A.Zipparo - there are concerns with soil and would like more testimony. Wish there was waterfront access. Great to see something happen with this site. Asked for building comps.

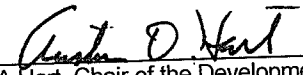
A.Hart - look forward to seeing what you come back with.

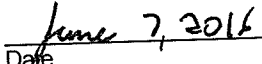
A.Hart - closed public hearing and meeting adjourned at 7:21pm.

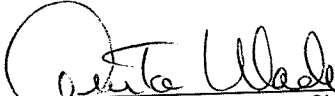
VII. Other Business

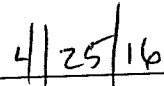
VIII. Adjournment

Deliberative Session: Monday January 25, 2016 at 5:00pm


A.Hart, Chair of the Development Review Board


Date


A.Wade, Planning and Zoning Clerk


Date

Plans may be viewed in the Planning and Zoning Office, (City Hall, 149 Church Street, Burlington), between the hours of 8:00 a.m. and 4:30 p.m.

Participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal. Please note that ANYTHING submitted to the Planning and Zoning office is considered public and cannot be kept confidential.

This may not be the final order in which items will be heard. Please view final Agenda, at www.burlingtonvt.gov/pz/drb/agendas or the office notice board, one week before the hearing for the order in which items will be heard.